

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BOBBY GORDON,

Plaintiff,

Case No. 1:07-CV-221

v.

Hon. Robert J. Jonker

ICG CASTINGS, INC.,

Defendant.

ORDER

On June 20, 2008, the Court granted Defendant's motion for summary judgment, thereby closing this case. (docket # 34.) Plaintiff appealed. (docket # 36.) Plaintiff, who is now proceeding in pro per, moves this Court for leave to file additional exhibits. (docket # 39.) Under Rule 56 of the Federal Rules of Civil Procedure, Plaintiff had the burden of responding to Defendant's motion for summary judgment by presenting evidence sufficient to show a genuine issue for trial. Plaintiff failed to carry that burden and cannot now ask the Court to reopen the record and effectively give him a second bite at the apple.

Plaintiff's motion does not indicate that the parties stipulate to expanding the record for purposes of appeal, nor does it indicate that something material was omitted from or misstated in the record by error or accident. Accordingly, this Court does not have the authority to grant Plaintiff's motion. *See* FED. R. APP. P. 10(e)(2) (providing that if something material was "omitted from or misstated in the record by error or accident," then

the district court may correct the omission or misstatement). Plaintiff's motion, which raises "questions as to the form and content of the record[,] must be presented to the court of appeals." *Id.* R. 10(e)(3).

ACCORDINGLY, IT IS ORDERED that Plaintiff's motion for leave to supplement the record (docket # 39) is DENIED without prejudice to his ability to bring a proper motion before the Sixth Circuit.

Dated: July 31, 2008

/s/ Robert J. Jonker
ROBERT J. JONKER
UNITED STATES DISTRICT JUDGE